

## **RULES GOVERNING THE COLLECTION OF THE UNIVERSAL CHARGE**

**WHEREAS**, Section 34 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (the “*Act*” or “*EPIRA*”), provides for a Universal Charge which shall be imposed on all End-Users for the following purposes:

1. Payment for the Stranded Debts in excess of the amount assumed by the National Government and Stranded Contract Costs of National Power Corporation (“NPC”);
2. Payment for the qualified Stranded Contract Costs of Distribution Utilities;
3. Missionary Electrification;
4. The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-à-vis imported energy fuels;
5. An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (PhP0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management and shall be managed by NPC under existing arrangements; and
6. A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

**WHEREAS**, Section 5 of Rule 18 of the Implementing Rules and Regulations of the Act (“*IRR*”) mandates that the Universal Charge shall be a non-bypassable charge which shall be (1) collected from all End-Users on a monthly basis by Distribution Utilities or Suppliers in case of a Contestable Market; or (2) remitted directly to the National Transmission Corporation (“*TRANSCO*”) or its Concessionaire by any End-Users or Self Generation Entities not connected to a Distribution Utility;

**WHEREAS**, Section 7 of Rule 18 of the IRR provides that Self-Generation Facilities which have registered with the ERC and PSALM shall not be covered by the imposition of the Universal Charge for a period of four (4) years from its imposition;

**WHEREAS**, there is a need to establish the Rules for the collection and remittance of the Universal Charge and to prescribe the responsibilities of the entities in the collection of the Universal Charge;

**WHEREAS**, Section 34 of the Act mandates the ERC to determine, fix and approve the Universal Charge to be imposed on all End-Users;

**NOW, THEREFORE**, be it RESOLVED as the ERC HEREBY RESOLVES, to adopt the following Rules to Govern the Collection of the Universal Charge:

## **Section 1: DEFINITION OF TERMS**

As used in these Rules, the following terms shall have the following respective meanings:

“*Act*” refers to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”;

“*Aggregator*” refer to a Person or entity duly licensed by the ERC to engage in consolidating electric power demand of End-users in a Contestable Market for the purpose of purchasing and reselling electricity on a group basis;

“*Beneficiaries*” refer to entities eligible or authorized by the ERC to avail of the Universal Charge pursuant to EPIRA and its IRR;

“*Buyer or Concessionaire*” refers to a qualified party awarded the sale agreement or Concession Contract for transmission assets; any reference made to TRANSCO shall apply to the Concessionaire upon its assumption of TRANSCO’s responsibilities;

“*Collecting Entities*” refer to the entities, namely: (1) TRANSCO or its Buyer or Concessionaire; and (2) Distribution Utilities or Suppliers, in case of Contestable Markets, who are authorized to collect from End-users on a monthly basis the Universal Charge as prescribed by the ERC;

“*Contestable Market*” refers to the electricity End-users who have a choice of a Supplier of electricity, as may be determined by the ERC in accordance with the Act;

“*Department of Finance*” or “*DOF*” refers to the government agency created pursuant to Executive Order No. 127, as amended;

“*Distribution Utility*” refers to any electric cooperative, private corporation, government owned and/or controlled utility or existing local government unit which has an exclusive franchise to operate a Distribution System in accordance with its franchise and the Act;

“*Economic Zones*” or “*EZs*” refer to selected areas which are being developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers. An EZ may refer to any of the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones (FTZs), Information Technology Parks and Tourist/Recreational Centers, such as those managed, administered, or operated by the Bases Conversion Development Authority (BCDA), Cagayan

Economic Zone Authority (CEZA), Clark Development Corporation (CDC) Philippine Economic Zone Authority (PEZA), Phividec Industrial Authority (PIA), and Zamboanga City Economic Zone Authority (ZCEZA);

“*Electric Cooperative*” or “*EC*” refers to a Distribution Utility organized pursuant to Presidential Decree No. 269, as amended, or as otherwise provided for in the Act;

“*End-user*” refers to any Person or entity requiring the supply and delivery of electricity for its own use;

“*Energy Regulatory Board*” or “*ERB*” refers to the independent, quasi-judicial regulatory body created under Executive Order No. 172, as amended;

“*Energy Regulatory Commission*” or “*ERC*” refers to the independent, quasi-judicial regulatory agency created by Section 38 of the Act;

“*Franchise Area*” refers to a geographical area exclusively assigned or granted to a Distribution Utility for distribution of electricity;

“*Guidelines*” refers to the “Guidelines and Procedures Governing the Remittances and Disbursements of the Universal Charge” promulgated by PSALM in consultation with the DOF and approved by the ERC;

“*Market Operator*” refers to either the “Autonomous Group Market Operator” or “AGMO” constituted by the DOE under Section 30 of the Act, with equitable representation from Electric Power Industry Participants, initially under the administrative supervision of the TRANSCO, which shall assume the functions, assets and liabilities of the AGMO or the “Independent Market Operator” or “IMO”, the entity jointly endorsed by the DOE and Electric Power Industry Participants to assume the functions, assets and liabilities from AGMO pursuant to Section 30 of the Act;

“*Missionary Electrification*” refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing operations in these areas to viability levels;

“*National Power Corporation*” or “*NPC*” refers to the government corporation created under Republic Act No. 6395, as amended;

“*National Transmission Corporation*” or “*TRANSCO*” refers to the corporation organized pursuant to the Act to acquire all the transmission assets of NPC;

“*Open Access*” refers to the system of allowing any qualified Person the use of transmission, and/or distribution system and associated facilities subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC. For this purpose, qualified Persons shall include all WESM Participants;

“*Person*” refers to a natural or juridical person, as the case may be;

“*Power Sector Assets and Liabilities Management Corporation*” or “*PSALM*” refers to the corporation created pursuant to Section 49 of the Act;

“*Retail Competition*” refers to the provision of electricity to a Contestable Market by Suppliers through Open Access;

“*Self-Generation Facility*” refers to a power Generation Facility owned and constructed by an End-user for such End-user’s own consumption or internal use excluding Generation Facilities for use by households, clinics, hospitals and other medical facilities;

“*Small Power Utilities Group*” or “*SPUG*” refers to the functional unit of NPC created to pursue Missionary Electrification functions;

“*Special Trust Fund*” or “*STF*” refers to a trust fund established by PSALM for each intended purpose of the Universal Charge and its corresponding Beneficiary or Beneficiaries;

“*Stranded Contract Costs of Eligible Contracts of Distribution Utilities*” refer to the excess of the contracted cost of electricity under eligible contracts of Distribution Utilities over the actual selling price of the contracted energy output of such contracts that would be incurred upon Retail Competition and Open Access. For this purpose, “eligible contracts” are contracts which have been approved by the ERB as of 31 December 2000;

“*Stranded Contract Costs of NPC*” refer to the excess of the contracted cost of electricity under eligible contracts of NPC over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of 31 December 2000;

“*Stranded Debts of NPC*” or “*Stranded Debts*” refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sale and Privatization of NPC assets: *Provided, however,* That such obligations include any of such obligations refinanced by PSALM: *Provided, further,* That such refinancing of such unpaid obligations shall not result in increasing the Universal Charge burden;

“*Supplier*” refers to any Person licensed by the ERC to sell, broker, market or aggregate electricity to End-users;

“*Universal Charge*” refers to the charge, if any, imposed for the recovery of the Stranded Debts of NPC , Stranded Contract Costs of NPC, Stranded Contract Costs of Eligible Contracts of Distribution Utilities and for other purposes authorized in Section 34 of the Act;

“*Wholesale Electricity Spot Market*” or “*WESM*” refers to the Wholesale Electricity Spot Market to be created in accordance with the Act; and

“*WESM Participants*” refer to all Generation Companies, Distribution Utilities, Suppliers, Aggregators, End-users, the TRANSCO or its Buyer or Concessionaire,

IPP Administrators, and other entities authorized by the ERC to participate in the WESM in accordance with the Act.

## **Section 2: COLLECTING ENTITIES**

The Universal Charge shall be collected by the following entities:

- (a) Distribution Utilities from End-Users in their captive markets;
- (b) Suppliers from End-Users in the contestable markets;
- (c) TRANSCO or its Concessionaire, as the case may be, from End-Users and Self-Generating Entities which are not connected to a distribution system and which are not served by a Supplier.

### **2.01 End-Users of Electricity**

The Universal Charge shall be imposed on the following persons:

- (a) All End-Users purchasing electricity from Distribution Utilities such as residential, commercial, and industrial consumers, including government and/or public buildings, irrigation systems, and special lighting systems, other than End-Users who purchase their electricity from a Supplier in case of Contestable Markets;
- (b) All End-Users purchasing electricity from Suppliers in case of Contestable Markets, including those End-Users who are not connected to a distribution system;
- (c) All other End-Users who are not connected to a distribution system, such as but not limited to government agencies and institutions, and industrial enterprises;
- (d) Locators, developers, operators and facilities operating in Economic Zones, provided they are not performing the distribution function;
- (e) Other entities which may be later on identified by the ERC pursuant to the intent of the Act.

## **Section 3: PROCEDURE IN THE COLLECTION OF UNIVERSAL CHARGE**

### **3.01 Collection of Universal Charge by Distribution Utilities and Suppliers**

The Universal Charge shall be collected in accordance with the following procedures:

- (a) Each Distribution Utility and Supplier shall determine the quantity of energy sales in kilowatt-hours (kWh) to each of its End-Users on a monthly basis.

- (1) In case of un-metered sales to an End-User, the Distribution Utility or Supplier shall determine the amount of energy sales to such End-User for the monthly period on the same basis as that used by such utility or supplier in determining the amount to be invoiced for its own account or, where no estimate of sales is required for such invoice, on the same basis as that used by such utility or supplier for recording and reporting its total energy sales.
  - (2) In case the electric power bills with respect to a particular End-User are prepared by the Distribution Utility or Supplier more frequently than once each month, the provisions of this section shall apply to each electric power bill and the quantity of energy sales in kilowatt-hours covered by each such bill.
- (b) The electric power bill to be served on each of the End-Users shall be prepared by each Distribution Utility or Supplier and must include the following separately identified items showing the respective amounts per kilowatt-hour, as approved by the ERC and the total amount payable for the billing period for each item:
- (1) Universal Charge for Stranded Debt and Stranded Contract Cost of NPC;
  - (2) Universal Charge for Stranded Contract Cost of Distribution Utilities;
  - (3) Universal Charge for Missionary Electrification;
  - (4) Universal Charge for Equalization of Taxes and Royalties;
  - (5) Universal Charge for rehabilitation and maintenance of watershed areas;
  - (6) Universal Charge for the removal of cross-subsidies.
- (c) The Universal Charge collected by each Distribution Utility or Supplier shall be remitted to the STF Account established by PSALM for this purpose.
- (d) The amount collected as Universal Charge shall not be included in the computation of Franchise Tax and Prompt Payment Discount.

### **3.02 Collection of Universal Charge by TRANSCO**

Each End-User or Self-Generating Entity not connected to a Distribution Utility shall remit the Universal Charge directly to TRANSCO, who in turn shall inform them of the amount of Universal Charge to be remitted. TRANSCO shall collect such amount in accordance with the following procedures:

- (a) TRANSCO shall meter or otherwise prepare a reasonable estimate of the quantities of electricity in kilowatt-hours consumed by End-Users or Self-Generating Entities, connected directly to its facilities, for each monthly billing period.

- (b) TRANSCO shall require the End-User or Self-Generating Entity to remit the Universal Charge at the same time that it collects an amount for its own account for transmission services rendered;
- (c) TRANSCO shall require the End-User or Self-Generating Entity to present appropriate documentary evidence to prove that it is paying the Universal Charge to a Supplier or if it disputes the quantity of the kilowatt-hours determined by TRANSCO.
- (d) The monthly bill to be issued to such End-Users or Self-Generating Entities shall contain the following information:
  - (1) The quantity of electricity in kilowatt-hours and the basis for its determination or estimation;
  - (2) The items enumerated in Section 3.01(b), the respective amounts per kilowatt-hour as approved by the ERC , the total amount payable for each item for the billing period and the total amount of Universal Charge payable;
- (e) Any Self-Generating Entity not connected to the facilities of TRANSCO shall be responsible for supplying the accurate computation and be held liable for understating such computation in cases where TRANSCO cannot estimate its total quantity of electricity consumed in kilowatt-hours other than those taken from the transmission system.
- (f) The Universal Charge collected by TRANSCO shall be remitted to the STF Account established by PSALM for this purpose.
- (g) The amount collected as Universal Charge shall not be included in the computation of the Prompt Payment Discount (PPD) of the End-User or Self-Generation Entity.

### 3.03 **Deferment of Universal Charge for Self-Generation Facilities**

Pursuant to Section 7, Rule 18 of the IRR, all Self-Generation Facilities whether new, existing or under construction shall not be covered by the imposition of Universal Charge for a period of four (4) years from its imposition: Provided, That, such Self-Generation Facilities shall register with the ERC and PSALM.

### 3.04 **Late, Partial or Non-Payment of Universal Charge**

In the event of late, partial or non-payment of the Universal Charge by any End-User or Self-Generating Entity, except as provided for in Section 3.03, the Collecting Entity concerned shall have the right to exercise all its powers and authority to enforce payment, including but not limited to the power to disconnect the electric service.

### 3.05 **Collection Shortfalls**

In the event that the actual collections of the concerned Collecting Entity for a specific month falls short of the actual billings served to its customers, the Collecting Entity shall determine the collection efficiency with respect to the monthly bill by dividing the amount of actual collections by the amount billed for the corresponding month. Said collection efficiency shall be applied to all components in the power bills, including the Universal Charge.

## **Section 4: PROVISION OF INFORMATION**

### 4.01 **Reportorial Requirements and Procedures**

- (a) Each Collecting Entity shall furnish PSALM with relevant information on its billing and collection for each calendar month to enable PSALM to monitor the proper remittance of the Universal Charge collections for the protection of all End-Users. The Market Operator shall likewise be required to submit information as set out in Section 4.03 to enable PSALM to verify the information provided by the Collecting Entities.
- (b) Each Collecting Entity shall submit to PSALM (by electronic mail or facsimile transmission) the statements or information described in Sections 4.02 through 4.03 for each calendar month on or before the fifteenth (15<sup>th</sup>) day of the succeeding month or in any case no later than the date the Collecting Entity remits its collections of the Universal Charge to the STF Account. For documents sent by electronic mail or facsimile transmission, the original of said statement or report must be given to PSALM within ten (10) working days from the remittance of the Universal Charge.

### 4.02 **Reports by Distribution Utilities and Suppliers**

Each Distribution Utility or Supplier, shall submit to PSALM each calendar month the following data/documents:

- (a) A certified statement of its total actual billings of electricity separately identifying the total amount billed in respect of each Universal Charge component. Such statement shall include the total actual sales of electricity in kWh. The form for the Universal Charge Total Actual Billings Statement and sample calculations are attached hereto as Annex "A" and "B", respectively.
- (b) A certified statement of its total actual collections separately identifying the amount collected for each Universal Charge component. The form for the Universal Charge total actual collections and sample calculations are attached hereto as Annex "C" and "D1"- "D2", respectively.
- (c) The Collecting Entity's Chief Financial Officer, or his equivalent or any duly authorized representative, must affix his signature to the statements identified in Sections 4.02(a) and 4.02(b) hereof.

- (d) A Collecting Entity, like the Distribution Utility, authorized by the ERC to collect the Universal Charge for its own Stranded Contract Cost, must identify in its statement under Section 4.02(a) the: 1) amount which it is authorized to avail for this purpose in the relevant calendar month; and 2) amount which it has billed to its End-Users for this purpose in the relevant calendar month. In its statement under Section 4.02(b), said Collecting Entity shall identify separately the amounts collected from its End-Users for this purpose and withheld from its remittance to the STF Account.

**4.03 Reports by TRANSCO**

- (a) TRANSCO shall submit the statements described in Section 4.02 in respect of its invoices to and collections from End-Users which are connected to the transmission system and not connected to a distribution system. In case TRANSCO does not meter and/or invoice any such End-Users on the basis of kilowatt-hours of sales, TRANSCO shall include in its statement under Section 4.02(a) the basis on which it has estimated the kilowatt-hours consumed by such End-Users in determining the Universal Charge which it has invoiced.
- (b) TRANSCO shall submit to PSALM a copy of the information which it has obtained from the Self-Generation Entities not connected to a Distribution Utility regarding any amount remitted to it (or its Concessionaire, as the case may be).

**4.03 Reports by Market Operator**

The Market Operator shall submit to PSALM not later than the fifteenth (15<sup>th</sup>) day of each month a summary of its actual meter readings in kilowatt-hours of the immediately preceding calendar month, separately identifying each metering point and the corresponding Distribution Utility, Supplier or End-User connected to the transmission system.

**Section 5: ACCOUNTABILITY AND REPORTING**

- (a) Each Collecting Entity shall collect and retain the Universal Charge collections in a fiduciary capacity and shall remit the same to the STF Account in accordance with the Guidelines.
- (b) Each Collecting Entity shall maintain separate books of accounts for each of the Universal Charge components described in Section 3.01(b), using the accounting entries indicated in Annex "E" hereof. Such books of accounts must be made available to the ERC and PSALM during business hours upon two (2) days prior written notice.

- (c) As required by Section 6 (d) of Rule 18 of the IRR, PSALM shall submit to the DOF and ERC on a quarterly basis a report on the remittances of the Universal Charge by Collecting Entities and disbursements from the STF.

**Section 6: Fines and Penalties**

The ERC shall monitor and ensure the implementation of this Rule. The ERC may impose the appropriate fines and penalties for any violation or non-compliance with any section therein, including but not limited to, assessed interest charges.

**Section 7: SEPARABILITY CLAUSE**

Should any provision or section of these Rules be declared unconstitutional or contrary to law, the parts not so declared shall remain in full force and effect.

**Section 8: EFFECTIVITY**

These Rules shall take effect on the fifteenth (15<sup>th</sup>) day following the publication in a newspaper of general circulation in the country.

Done in the City of Pasig this 28<sup>th</sup> day of May 2003.